

RODELA D. TORREGOZA, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.*G.R. No. 101526. July 03, 1992*

Ponente: PARAS, J.

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The petition filed under Rule 65 of the Revised Rules of Court, seeks to review the decision of the respondent Civil Service Commission, dated July 4, 1991, denying the petitioner the privilege granted under Republic Act No. 6850, entitled "An Act to Grant Civil Service Eligibility Under Certain Conditions to Government Employees Appointed Under Provisional or Temporary Status Who Have Rendered a Total of Seven (7) Years of Efficient Service, and for Other Purposes". The petition prays for a Writ of Mandamus to compel the respondent Commission to grant the petitioner the appropriate civil service eligibility pursuant to the aforestated law, for having worked in the Legal Office, Office of the President, Malacanang, Manila, since January 18, 1978, to the present.

The original appointment of the petitioner on January 18, 1978, was one of the six (6) Staff Aide positions, in the aforementioned office, specifically Item No. 198-6, (P.D. No. 1050), issued by then Presidential Assistant Juan C. Tuvera for a period of six (6) months. On June 5, 1978, less than five months after the first appointment, petitioner was given another appointment to the same position effective "as of June 18, 1978" and with a notation that "This appointment is declared confidential." (Rollo, p. 39)

Obviously, since 1978 to February 8, 1990 when Republic Act No. 6850 became a law, petitioner never left the same position. Then on March 5, 1990, respondent Commission issued the "Rules Implementing Republic Act No. 6850, enabling the petitioner to file her application for the appropriate eligibility to the position she has been occupying for the last thirteen (13) years and having accordingly rendered efficient service. (The Solicitor General's Comment, pp. 3 & 13)

Petitioner's request was returned unacted upon by respondent's field office in Malacanang, Manila for the reason that based on the service record submitted by the Personnel Office of the Office of the President, petitioner's position had allegedly been declared confidential. (Ibid., p. 4)

In the course of time, after the Salary Standardization Law (Republic Act No. 6758) was passed, the same position was reclassified as Clerk II in July 1989. (Rollo, p. 5)

Subsequently, Deputy Executive Secretary Mariano Sarmiento sent a letter to the respondent dated November 7, 1990, (Petition, Annex "G") requesting that based on the present certified function and actual duties of the petitioner, the position be restored to the career service and that said petitioner be granted the civil service eligibility under R.A. No. 6850. (Rollo, p. 33).

Respondent Commission denied petitioner's request on January 28, 1991, after determining that petitioner's appointment in 1978 was declared by the Office of the President as "confidential in nature", nevertheless,

respondent stated that "an analysis of the duties and responsibilities of the subject position reveals that they are the same with the other positions in the career service x x x" and specifically held, that:

"In view of the foregoing, the request for restoration of the position of Clerk II to career service is hereby granted effective January 1, 1991. However, the incumbent shall continue to occupy the position in a confidential status. Any subsequent appointment to subject position shall be covered by career service policies." (Petition, Annex "A")

On February 27, 1991, petitioner moved for reconsideration of the foregoing Decision, but the respondent stood firm in its resolution dated July 4, 1991, by issuing the following ruling:

"After due consideration of the instant request for reconsideration of Torregoza, this Commission finds no ample reason to disturb its Opinion of January 28, 1991. The Office of the President declared her previous appointments as primarily confidential and they were all attested as such by this Commission. These twin actions, i.e., declaration by the Office of the President and confirmation by this Commission made the appointments in question to be primarily confidential. Moreover, granting *en arguendo* that the position in question may not have been properly and validly declared as primarily confidential, all concerned were of the belief that the appointments issued to Torregoza as Clerk II were indeed primarily confidential. Further, it cannot also be denied that from the time her first appointment was issued up to the time that she requested for the change of the status of her appointment, Torregoza enjoyed the benefits of the primarily confidential nature of her position. She is, therefore, estopped from questioning and impugning the validity of her previous appointments specially now, that she stands to benefit from the provisions of R.A. 6850, with a declaration of her appointment as temporary.

"WHEREFORE, foregoing premises considered, this Commission resolves to deny the instant request of Rodela Torregoza, Clerk II, Office of the President that she be issued a temporary appointment as Clerk II effective July 1, 1989, the effectivity date of RA 6758 for lack of merit. Hence, CSC Opinion of January 28, 1991 is hereby affirmed." (Petition, Annex "H")

From the above facts, there are two (2) issues to be resolved, however, one is subordinate to the other. The principal issue is whether or not the writ of mandamus may be issued by this Court to compel the respondent Commission to grant the petitioner the privilege of securing an appropriate civil service eligibility under Republic Act No. 6850. The answer to this is NO. The simple reason being that under the law granting the privilege to government employees, there is a wide latitude of discretion given to the Commission which determines in Section 1 thereof, "who are qualified to avail themselves of the privilege granted under this Act." With such discretion, Section 2 of the same law requires the Civil Service Commission to promulgate the rules and regulations to implement this Act using certain standards. Following are the pertinent provisions of Republic Act No. 6850:

"Section 1. All government employees as of the approval of this Act who are holding career civil service positions appointed under provisional or temporary status who have rendered at least a total of seven (7) years of efficient service may be granted the civil service eligibility that will qualify them for permanent appointment to their present positions.

"The Civil Service Commission shall formulate performance evaluation standards in order to determine those temporary employees who are qualified to avail themselves of the privilege granted under this Act.

"The civil service eligibility herein granted may apply to such other positions as the Civil Service Commission may deem appropriate.

"Sec. 2. The Civil Service Commission shall promulgate the rules and regulations to implement this Act consistent with the merit and fitness principle within ninety (90) days after its effectivity."

From the above, it is crystal-clear that the Writ of Mandamus will not lie as the responsibility of the respondent Commission in implementing the law is not ministerial, besides, what the law granted is a mere privilege and not a right to those who are qualified according to the standards to be set by the Commission.

In *Marcelo vs. Tantuico, Jr.*, (142 SCRA 439), citing other cases, this Court held that the "Remedy of mandamus is available only to compel the performance of a ministerial duty, but not where the reinstatement involves the exercise of sound judgment and discretion by the appointing power, absent a showing of a clear and certain right by petitioner."

The other question that this Court deems appropriate for resolution is the categorization of the position in the Legal Office, Office of the President, Malacanang, Manila. This categorization attaches to the entire Office of the President under Republic Act No. 6040, which provides:

"Sec. 5. The Non-Competitive Service. - The non-competitive service shall be composed of positions expressly declared by law to be in the non-competitive service and those which are policy-determining, primarily confidential or highly technical in nature.

"The following specific officers and employees shall be embraced in the non--competitive service:

x x x

"(b) The secretarial and office staff of the President, of the Vice-President, of the President of the Senate, of the Speaker of the House of Representatives and of each Member of the Congress of the Philippines including the personnel of all offices of the Chairmen of committees of both Houses of the Congress;"

This particular law has never been repealed and therefore, it is still controlling with respect to the classification of the secretarial and office staff positions in the Office of the President as belonging to the non-competitive service. Thus, any subsequent classification of the same positions has to be made with the specific sanction of the legislative branch. The mere fact that the functions of the position in question are parallel or the same as those in the career civil service positions, do not make the said position eligible for conferment of the civil service eligibility specially given to other government employees in the competitive service.

Furthermore, the classification under the Salary Standardization Act, also known as the "Compensation and Position Classification Act of 1989", Republic Act No. 6758, did not in effect amend the specific above-quoted provision of R.A. 6040. For the statement of policy of the former is distinctly clear as it states the following:

"SEC. 2. Statement of Policy. - It is hereby declared the policy of the State to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in the private sector for comparable work. For this purpose, the Department of Budget and Management (DBM) is hereby directed to establish and administer a unified Compensation Position Classification System, hereinafter referred to as the System, as provided for in Presidential Decree No. 985, as amended, that shall be applied for all government entities, as mandated by the Constitution."

Moreover, this Court noted with alarm the attempt of the respondent Commission in subjecting the position in question to the coverage of the "career service policies" after the incumbent shall have ceased to occupy the position in a confidential status, without the necessary enabling act after the legislative branch of the Government has placed the secretarial and office staff of the Office of the President under the non-competitive category. To do so is a glaring violation of Republic Act No. 6040, the specific provision of which is quoted above.

WHEREFORE, in view of the foregoing, the petition is DISMISSED for lack of merit.

SO ORDERED.

Cruz, Feliciano, Padilla, Bidin, Grino-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

Narvasa, C.J., (Chairman), and Gutierrez, Jr., J., in the result.

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